

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JOYCE RAE FENDALL WILKINSON,  
as Personal Representative and  
Administratrix of the ESTATE of  
PAUL THOMAS WILKINSON, II, ET AL.

Plaintiffs,

vs.

KATHRYN JEAN FAULEY, M.D.,  
ET AL.,

Defendants.

Case No. C-1-01288

Judge Beckwith  
Magistrate Black

**JURY TRIAL ENDORSED HEREON**

DESIGNATION OF PLACE OF  
TRIAL: Cincinnati, Ohio

**ANSWER OF DEFENDANT, KATHRYN JEAN FAULEY, M.D.  
TO PLAINTIFF'S AMENDED COMPLAINT**

**GENERAL ALLEGATIONS**

Now comes Defendant, Kathryn J. Fauley, M.D., by and through counsel, and for her Answer to Plaintiff's Amended Complaint, states as follows:

1. This answering Defendant admits the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint.

2. This answering Defendant is without information or knowledge sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 2 of Plaintiff's Amended Complaint and, therefore, denies the same.

3. In response to the allegations contained in Paragraph 3 of Plaintiff's Amended Complaint, this answering Defendant denies a physician-patient relationship only insofar as there is no definition in the Amended Complaint of "at all pertinent

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times". This answering Defendant admits the remaining allegations contained in Paragraph 3 of Plaintiff's Amended Complaint.

4. This answering Defendant admits the allegations contained in Paragraph 4 of Plaintiff's Amended Complaint but only insofar as they may pertain to her specialty of obstetrics and gynecology.

5. In response to the allegations contained in Paragraphs 5, 6, 7, 8, 9, 10 and 11 of Plaintiff's Amended Complaint, this answering Defendant is without information or knowledge sufficient to form a belief as to the truthfulness of the allegations contained therein and, therefore, denies the same.

#### **STATEMENT OF FACTS**

This answering Defendant incorporates by reference her responses to Paragraphs one through eleven (1-11) of Plaintiff's Amended Complaint as if fully rewritten herein.

6. In response to Paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of Plaintiff's Amended Complaint, this answering Defendant admits that she rendered certain care and treatment to Plaintiffs as set forth in the medical and hospital records. Further answering, this answering Defendant is without information or knowledge sufficient to form a belief as to the truthfulness of all the remaining allegations contained in Paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of Plaintiff's Amended Complaint and, therefore, denies the same.

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**COUNT I – CLAIM OF LIABILITY**

This answering Defendant incorporates by reference her responses to Paragraphs one through twenty-three (1-23) of Plaintiff's Amended Complaint as if fully rewritten herein.

7. In response to the allegations contained in Paragraph 24 of Plaintiff's Amended Complaint, this answering Defendant states that she is without information or knowledge sufficient to form a belief as to the truthfulness of the allegations therein and, therefore, denies the same.

8. In response to the allegations contained in Paragraphs 25 and 26 of Plaintiff's Amended Complaint, this answering Defendant denies each and every allegation set forth therein.

9. In response to the allegations contained in Paragraphs 27, 28, 29, 30, 31 and 32 of Plaintiff's Amended Complaint, this answering Defendant is without information or knowledge sufficient to form a belief as to these allegations and, therefore, denies the same.

10. This answering Defendant denies the allegations contained in Paragraph 33 of Plaintiff's Amended Complaint.

**COUNT II – SURVIVAL CLAIM**

This answering Defendant incorporates by reference her responses to Paragraphs one through thirty-three (1-33) of Plaintiff's Amended Complaint as if fully rewritten herein.

11. This answering Defendant denies the allegations contained in Paragraph 34 of Plaintiff's Amended Complaint.

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**COUNT III – WRONGFUL DEATH CLAIM**

This answering Defendant incorporates by reference her responses to Paragraphs one through thirty-four (1-34) of Plaintiff's Amended Complaint as if fully rewritten herein.

12. This answering Defendant denies the allegations contained in Paragraph 35 of Plaintiff's Amended Complaint.

This answering Defendant denies each and every other allegation of Plaintiff's Amended Complaint not specifically admitted herein to be true.

**AFFIRMATIVE DEFENSES**

13. Plaintiff's Amended Complaint fails, in whole or in part, to state a claim against this answering Defendant upon which relief can be granted.

14. Plaintiff's Amended Complaint is barred, in whole or in part, by the applicable statutes of limitations.

15. Plaintiff and Plaintiff's decedent's injuries and damages, if any, which injuries and damages are specifically denied, were caused by third persons, parties or entities over which this answering Defendant had and could have had no control.

16. Plaintiff has failed to join necessary and indispensable parties to this action.

17. Plaintiff consented to the medical treatment provided and assumed the risks of the injuries and damages complained of, if any, which injuries and damages are specifically denied.

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18. The injuries and damages alleged in Plaintiff's Amended Complaint, if any, were due to the superseding and/or intervening negligence of others and, therefore, Plaintiff's claims are barred and/or mitigated.

19. Plaintiff's negligence caused or contributed to cause the injuries and damages alleged in Plaintiff's Amended Complaint, if any, thereby barring and/or mitigating the Plaintiff's claims.

20. The damages and injuries alleged in Plaintiff's Amended Complaint, if any, were caused by naturally occurring medical events and/or conditions and not by reason of any negligence committed by this answering Defendant.

21. This answering Defendant is entitled to a set-off of damages and/or limitation of damages pursuant to statute.

22. Plaintiff has failed to obtain service and/or service of process upon this answering Defendant.

23. This answering Defendant respectfully reserves the right to assert affirmative defenses if ongoing discovery reveals that such defenses are warranted.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendant, Kathryn Jean Fauley, M.D., prays that Plaintiff's Amended Complaint be dismissed as against her with prejudice and that she recover fees and costs.

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By: /S/ Maryellen C. Spirito

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**JURY DEMAND**

Defendant, Kathryn J. Fauley, M.D., demands trial by jury of the within action.

/S/ Maryellen C. Spirito  
Maryellen C. Spirito

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 20th day of July, 2004, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system which will send a notice of electronic filing to the following:

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